

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WILSON BARRERA and ABNER JORAM
ORREGO, *individually and on behalf of all
other employees similarly situated*,

Plaintiffs,

-against-

F F AND A RESTAURANT CORP. d/b/a
Pollos A La Brasa Marion, LUIS
FIGUEROA, ROSALBA AREVALO, and
ROBERT CORDOVA,

Defendants.

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RACHEL P. KOVNER, United States District Judge:

Plaintiffs Wilson Barrera and Abner Joram Orrego brought this action against F F and A Restaurant Corp., Luis Figueroa, Rosalba Arevalo, and Robert Cordova under the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”). *See* Compl. ¶ 1 (Dkt. #1). Defendants move for leave to file an amended answer that would include a counterclaim under the faithless-servant doctrine, as well as counterclaims of breach of fiduciary duty, conversion, and unjust enrichment. *See* Answer (Dkt. #7); Notice of Mot. (Dkt. #26). That motion was referred to Chief Magistrate Cheryl L. Pollak for a report and recommendation. *See* Order Referring Mot. (Oct. 6, 2020).

Judge Pollak recommends that the motion to amend the answer be granted in part. She recommends that defendants be permitted to add their faithless-servant counterclaim but not their counterclaims for breach of fiduciary duty, conversion, and unjust enrichment. *See* Report and Recommendation (“R. & R.”) at 18 (Dkt. #33). No party has objected to the R. & R. within the time required by Section 636(b)(1).

When, as here, no party has objected to a magistrate judge's recommendation, the recommendation is reviewed, at most, for "clear error." *See* Fed. R. Civ. P. 72(b), Advisory Committee's Notes (1983) ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."); *see, e.g.*, *Alvarez Sosa v. Barr*, 369 F. Supp. 3d 492, 497 (E.D.N.Y. 2019). Clear error will only be found only when, upon review of the entire record, the Court is left with "the definite and firm conviction that a mistake has been committed." *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006). I have reviewed Judge Pollak's report and recommendation and, having found no clear error, adopt it in full. Defendants may submit an amended answer that includes a faithless-servant counterclaim. Defendants may not add their other proposed counterclaims.

SO ORDERED.

/s/ *Rachel Kovner*
RACHEL P. KOVNER
United States District Judge

Dated: May 25, 2021
Brooklyn, New York